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State Franchise and Dealer Laws

Filing Amended FDD Registration Application in California Requires Redisclosure

A federal court in California has denied a franchisor's motion to dismiss a claim that it violated California's disclosure law because it failed to redisclose a prospective franchisee with, among other things, the franchisor's then-effective amended FDD. *Schulenburg v. Handel's Enters., Inc.*, 2018 WL 4282637 (S.D. Cal. Sept. 7, 2018). Handel's provided its FDD to the prospective franchisee, Schulenburg, in October 2015. In December 2015, Schulenburg sent a small deposit of the initial franchise fee to Handel's, without signing the franchise agreement. On January 11, 2016, Handel's submitted an application to the state of California to amend its FDD, which became effective a few days later. Schulenburg paid the remainder of the franchise fee the same day the amended FDD became effective. Handel's then again provided the franchisee with the 2015 FDD, and the parties executed the franchise agreement. Handel's never redisclosed Schulenburg with the amended FDD. Schulenburg subsequently brought several claims against Handel's, including violations of California's disclosure laws.

The court held that, under California law, an offer for a franchise may remain pending while an application for amendment is pending with the state, as long as the franchisor provides certain documents to the franchisee, waits to close the sale until the amended FDD is effective, and then rediscloses the franchisee with the amended FDD and proceeds with the normal sale procedures. Here, even though Schulenburg was properly disclosed with the 2015 FDD in October 2015, and paid a deposit of the initial franchise fee while the 2015 FDD was effective, the offer was still pending when Handel's filed the application for amendment in 2016. When the parties executed the franchise agreement in January 2016, the 2015 FDD was no longer in effect, and the amended FDD should have been delivered to Schulenburg. Thus, the court held that Schulenburg plausibly stated a claim that Handel's violated California's disclosure laws.

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